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CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

CARL LIVINGSTON ROUSE,
CDCR #AA-5835,

Civil No. 10-1304 WQH (BGS)

Plaintiff,

vs.

ANTHONY CAMPAGNA, Deputy District
Attorney;
ANDY SPEAR, Detective;
CHARLES ADAIR, Attorney;
WILLIAM CAHILL, District Attorney
Investigator;
DENNIS HODGES, SSU Agent; and
PITUCCI, SDPD Sergeant #4304,

**ORDER DISMISSING CIVIL
ACTION FOR FAILING TO PAY
FILING FEES PURSUANT TO
28 U.S.C. § 1914(a) AND FOR
FAILING TO MOVE
IN FORMA PAUPERIS
PURSUANT TO
28 U.S.C. § 1915(a)**

Defendants.

Plaintiff, currently incarcerated at High Desert State Prison in Susanville, California, and proceeding pro se, has filed a civil rights complaint pursuant to 42 U.S.C. § 1983. Plaintiff claims he is the victim of a 2008 malicious prosecution in San Diego Superior Court. See Compl. at 4-6.

I. FAILURE TO PAY FILING FEE OR REQUEST IFP STATUS

Any party instituting a civil action, suit or proceeding in a district court of the United States, other than a writ of habeas corpus, must pay a filing fee of \$350. See 28 U.S.C. § 1914(a). An action may proceed despite a party's failure to pay only if the party is granted

1 leave to proceed *in forma pauperis* ("IFP") pursuant to 28 U.S.C. § 1915(a). *See Andrews v.*
 2 *Cervantes*, 493 F.3d 1047, 1051 (9th Cir. 2007); *Rodriguez v. Cook*, 169 F.3d 1176, 1177 (9th
 3 Cir. 1999). However, Plaintiff has not prepaid the \$350 filing fee required to commence a civil
 4 action; nor has he submitted a Motion to Proceed IFP. Therefore, the case must be dismissed
 5 pursuant to 28 U.S.C. § 1914(a).

6 **II. Conclusion and Order**

7 For the reasons set forth above, the Court hereby:

8 (1) **DISMISSES** this action sua sponte without prejudice for failing to pay the \$350
 9 filing fee or file a Motion to Proceed IFP pursuant to 28 U.S.C. §§ 1914(a) and 1915(a); and

10 (2) **GRANTS** Plaintiff **forty five (45)** days leave from the date this Order is filed to:
 11 (a) prepay the entire \$350 civil filing fee in full; *or* (b) complete and file a Motion to Proceed
 12 IFP which includes a certified copy of his trust account statement for the 6-month period
 13 preceding the filing of his Complaint. *See* 28 U.S.C. § 1915(a)(2); S.D. CAL. CivLR 3.2(b).¹

14 **IT IS FURTHER ORDERED** that the Clerk of the Court shall provide Plaintiff with the
 15 Court's form "Motion and Declaration in Support of Motion to Proceed *In Forma Pauperis*."
 16 If Plaintiff fails to either prepay the \$350 civil filing fee or complete and submit the enclosed
 17 Motion to Proceed IFP within that time, this action shall remain dismissed without prejudice and
 18 without further Order of the Court.

19 **IT IS SO ORDERED.**

20 DATED: 6/24/10

21 HON. WILLIAM Q. HAYES
 22 United States District Judge

23

24 ¹ Plaintiff is cautioned that if he chooses to proceed further with this action either by paying the
 25 full civil filing fee required by 28 U.S.C. § 1914(a), or moving to proceed IFP, his Complaint will be
 26 screened and may be dismissed before service sua sponte pursuant to 28 U.S.C. § 1915A(b) and 28
 27 U.S.C. § 1915(e)(2)(b). *See Lopez v. Smith*, 203 F.3d 1122, 1126-27 (9th Cir. 2000) (en banc) (noting
 28 that 28 U.S.C. § 1915(e) "not only permits but requires" the court to sua sponte dismiss an *in forma
 pauperis* complaint that fails to state a claim); *see also Resnick v. Hayes*, 213 F.3d 443, 446 (9th Cir.
 2000) (discussing sua sponte screening required by 28 U.S.C. § 1915A(b)). Moreover, if the Court enters
 an Order dismissing this action for failing to state a claim, that dismissal may be counted as a "strike"
 against Plaintiff if he requests IFP status in any future civil action filed while incarcerated. *See Andrews*,
 493 F.3d at 1052 (under the Prison Litigation Reform Act, "[p]risoners who have repeatedly brought
 unsuccessful suits may entirely be barred from IFP status under the three strikes rule[.]").